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CITATION

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139747—35

In the Supreme Court of the United States.

OCTOBER TERM, 1935

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

FRANCES G. LEE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the First Circuit entered in the above-entitled cause on March 9, 1935, reversing the decision of the Board of Tax Appeals.

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 16–18) is not reported. The opinion of the Circuit Court of Appeals is reported in 76 F. (2d) 203.

JURISDICTION

The judgment of the Circuit Court of Appeals reversing the decision of the Board of Tax Appeals was entered March 9, 1935. (R. 27.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether personal property of a decedent, passing to the taxpayer otherwise than by specific bequest, may be considered to have been held by the taxpayer, under the provisions of Section 101 (c) (8) of the Revenue Act of 1928, during any period prior to actual distribution to the taxpayer.

STATEMENT

This case involves Federal income taxes for the year 1929 in the sum of $34,523.85. (R. 8.) The facts were stipulated (R. 9–15), and as found by the Board of Tax Appeals (R. 16–17) may be summarized as follows:

The taxpayer is a resident of Littleton, New Hampshire. Under the will of her deceased uncle, George B. Glessner, who died on September 4, 1926 (R. 10), the taxpayer was made one of his residuary legatees (R. 12, Item 9; R. 14). On October 6, 1927, the executor of the decedent's estate distributed to the taxpayer, out of the residue of the estate, 1,550 shares of International Harvester

Company and 300 shares of the Commonwealth Edison Company. (R. 14.)

In 1928, the taxpayer exchanged the 1,550 shares of International Harvester Company, which had a par value of $100 per share, for 6,200 shares of that company having no par value, and, later, during that year, received 248 shares of the stock of the same company having no par value as a stock dividend upon the 6,200 shares then held by her. (R. 14–15.)

The taxpayer sold in 1929 the said 6,448 shares of International Harvester Company on dates as follows (R. 15):

January 4, 1929, 948 shares.
January 25, 1929, 2,500 shares.
March 5, 1929, 1,000 shares.
September 3, 1929, 2,000 shares.

On September 30, 1929, the taxpayer, as owner of the 300 shares of stock of Commonwealth Edison Company aforementioned, received rights to subscribe to additional stock of said company, which she sold forthwith for $9,402.18. The proper allocation of value of said rights is 8.060453 percent of the value of said stock. (R. 15.)

The gain arising from the sale of the stock of International Harvester Company referred to above was $372,405.50. The gain from the sale of the rights of Commonwealth Edison Company referred to above was $5,460.62. (R. 15.) The amount of such gain was not disputed. (R. 16.)

The taxpayer included the gain realized from the sale of the stock and rights above mentioned in her income-tax return for the year 1929 as capital net gain, and computed the tax thereon at 12½% of said gain. (R. 5, 6.)

The respondent, in his letter of final determination of deficiency for the year 1929, treated the gain as ordinary income and asserted a deficiency in income tax for that year in the sum of $34,523.85. (R. 7–9.)

The Board of Tax Appeals found that the securities hereinabove mentioned had not been held by the taxpayer for more than two years within the meaning of Section 101 (c) (8) of the Revenue Act of 1928, c. 852, 45 Stat. 791, and determined that there was a deficiency in income tax for the year 1929 in the amount of $34,523.85. (R. 18.) The Circuit Court of Appeals for the First Circuit reversed the Board of Tax Appeals on the authority of its decision in *First Nat. Bank of Boston* v. *United States*, 76 F. (2d) 200.

SPECIFICATION OF ERRORS TO BE URGED

The Commissioner urges that the Circuit Court of Appeals erred:

1. In holding that the taxpayer, as a residuary legatee receiving personal property upon distribution of the decedent's estate, was to be deemed to have held such property from the date of the decedent's death for the purpose of determining the

holding period, under the provisions of Section 101 (c) (8) of the Revenue Act of 1928.

2. In failing and refusing to hold that for the purpose of determining the holding period, under the provisions of Section 101 (c) (8) of the Revenue Act of 1928, the taxpayer, as a residuary legatee, should be deemed to have held personal property received from distribution of the decedent's estate only from the date of actual distribution to the taxpayer.

3. In reversing the decision of the Board of Tax Appeals and remanding the case.

REASONS FOR GRANTING THE WRIT

The question here presented is identical with that presented in *United States of America* v. *First National Bank of Boston et al.*, No. ———, October term, 1935, petition for a writ of certiorari in which case is being filed simultaneously herewith.

For the reasons set forth in the Government's petition in the case of *United States of America* v. *First National Bank of Boston et al.*, it is respectfully submitted that the petition here should be granted.

STANLEY REED,
Solicitor General.

JUNE 1935.

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